

ASSEMBLY BILL

No. 593

Introduced by Assembly Member Levine

February 24, 2015

An act to amend Section 1390 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 593, as introduced, Levine. Hearsay: admissibility of statements.

Existing law, known as the “hearsay rule,” provides that, at a hearing, evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated is inadmissible. Existing law also provides exceptions to the hearsay rule to permit the admission of specified kinds of evidence. Existing law provides that evidence of a statement that is offered against a party who has engaged, or aided and abetted, in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness is not made inadmissible by the hearsay rule, as specified. Existing law would repeal this exception on January 1, 2016.

This bill would delete the January 1, 2016, repeal date for these provisions, thereby extending the hearsay exemption into perpetuity.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1390 of the Evidence Code is amended
2 to read:

1 1390. (a) Evidence of a statement is not made inadmissible
2 by the hearsay rule if the statement is offered against a party that
3 has engaged, or aided and abetted, in the wrongdoing that was
4 intended to, and did, procure the unavailability of the declarant as
5 a witness.

6 (b) (1) The party seeking to introduce a statement pursuant to
7 subdivision (a) shall establish, by a preponderance of the evidence,
8 that the elements of subdivision (a) have been met at a foundational
9 hearing.

10 (2) The hearsay evidence that is the subject of the foundational
11 hearing is admissible at the foundational hearing. However, a
12 finding that the elements of subdivision (a) have been met shall
13 not be based solely on the uncontroverted hearsay statement of the
14 unavailable declarant, and shall be supported by independent
15 corroborative evidence.

16 (3) The foundational hearing shall be conducted outside the
17 presence of the jury. However, if the hearing is conducted after a
18 jury trial has begun, the judge presiding at the hearing may consider
19 evidence already presented to the jury in deciding whether the
20 elements of subdivision (a) have been met.

21 (4) In deciding whether or not to admit the statement, the judge
22 may take into account whether it is trustworthy and reliable.

23 (c) This section shall apply to any civil, criminal, or juvenile
24 case or proceeding initiated or pending as of January 1, 2011.

25 ~~(d) This section shall remain in effect only until January 1, 2016,~~
26 ~~and as of that date is repealed, unless a later enacted statute, that~~
27 ~~is enacted before January 1, 2016, deletes or extends that date. If~~
28 ~~this section is repealed, the fact that it is repealed, should it occur,~~
29 ~~shall not be deemed to give rise to any ground for an appeal or a~~
30 ~~postverdict challenge based on its use in a criminal or juvenile~~
31 ~~case or proceeding before January 1, 2016.~~